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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,616

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Esko Pulkka

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20374 7590 01/04/2010
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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/04/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/552,616	Applicant(s) PULKKA, ESKO	
	Examiner ALICIA CHEVALIER	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 5-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO AMENDMENT

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 9, 2009 has been entered.
2. Claims 1-10 are pending in the application, claims 1-3 and 5-10 are withdrawn from consideration. Claim 11 has been cancelled.
3. Amendments to the claims, filed on October 9, 2009, have been entered in the above-identified application.

WITHDRAWN REJECTIONS

4. The 35 U.S.C. §103 rejection of claim 4 as over Yee (U.S. Patent No. 5,171,623), made of record in the office action mailed June 9, 2009, page 3, paragraph #3 has been withdrawn.

REJECTIONS

5. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 112

6. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "greatest resistance to motion" in claim 4 is a relative term which renders the claim indefinite. The term "greatest resistance to motion" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

7. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Yee (U.S. Patent No. 5,171,623).

Yee discloses a body (*airplane or boat, col. 3, lines 45 and 68*) which has reduced kinetic friction with air, gas or a liquid, since Yee disclose the surface structures reduce viscous fluid drag on a body moving through a fluid medium such as air or water (*col. 1, lines 5-7*). The body comprises a surface which contacts the air, gas or liquid (*figures 1 and 2*) and a part that offers the greatest resistance to motion (*airplane or boat, col. 3, lines 45 and 68*). The part has sunken or raised patterns thereon (*depressions, col. 3, line 47 and ref. #10*).

The limitations "automobiles," "trains," "trailers and vehicle top boxes," "motor cycles," "airplanes," "rockets and missiles," "grenades and serial bombs," "bullets and shots," "ships," "motor boat," "torpedoes," and "surf boards" are deemed to be a statement with regard to the intended use and is not further limiting in so far as the structure of the product is concerned. In

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article claims, a claimed intended use must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. MPEP § 2111.02. Furthermore, Yee discloses that the body can be airplanes and ships (*airplane or boat, col. 3, lines 45 and 68*).

8. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashoi (U.S. Patent No. 4,787,638).

Kobayashoi discloses a body (*golf ball, title* which has reduced kinetic friction with air, gas or a liquid, since Kobayashoi disclose the surface structures improve the aerodynamic characteristics (*col. 1, lines 6-16*). The body comprises a surface which contacts the air, gas or liquid (*figures 1 and 2*) and a part that offers the greatest resistance to motion (*spherical body, col. 3, line 26*). The part has sunken or raised patterns thereon (*dimples, col. 3, lines 31-35 and ref. #11 and #12*).

The limitations “automobiles,” “trains,” “trailers and vehicle top boxes,” “motor cycles,” “airplanes,” “rockets and missiles,” “grenades and serial bombs,” “bullets and shots,” “ships,” “motor boat,” “torpedoes,” and “surf boards” are deemed to be a statement with regard to the intended use and is not further limiting in so far as the structure of the product is concerned. In article claims, a claimed intended use must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. MPEP § 2111.02. Furthermore, Kobayashoi discloses tat the body can be a golf ball, e.g. a missile, which is capable of being projected to strike a distant object.

ANSWERS TO APPLICANT'S ARGUMENTS

9. Applicant's arguments in the response filed October 9, 2009 regarding the Yee reference, U.S. Patent No. 5,171,623, of record have been carefully considered but are deemed unpersuasive.

Applicant argues that Yee does not disclose or suggest limiting the drag reducing surface depressions to only part of the surface of a body.

The limitations on which the Applicant relies (e.g. depressions on only part of the surface of a body) are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. While the claim does require the new claimed "part" to have the "sunken or raised patterns" it does not exclude the "sunken or raised patterns" from other parts of the body, nor is the "part" excluded from being the entire body.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alicia Chevalier/

Primary Examiner, Art Unit 1794

1/4/2010